

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ACELYN ZANKMAN
2704 Tolbut Street
Philadelphia, PA 19152

CIVIL ACTION

Plaintiff,

No. _____

v.

THE UNIVERSITY OF PENNSYLVANIA
3451 Walnut Street
Philadelphia, PA 19104

JURY TRIAL DEMANDED

Defendant.

CIVIL ACTION COMPLAINT

Plaintiff, by and through his undersigned counsel, hereby avers as follows:

INTRODUCTION

1. This action has been initiated by Acelyn Zankman (hereinafter referred to as "Plaintiff," unless indicated otherwise) against The University of Pennsylvania (hereinafter referred to as "Defendant" unless indicated otherwise) for violations of the Americans with Disabilities Act ("ADA" - 42 U.S.C. §§ 12101 *et. seq.*), the Family and Medical Leave Act ("FMLA" - 29 U.S.C. §§ 2601 *et. seq.*) and the Pennsylvania Human Relations Act ("PHRA" - 43 P.S. §§ 951 *et. seq.*). As a direct consequence of Defendant's unlawful actions, Plaintiff seeks damages as set forth herein.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1333(a)(4) because it arises under the laws of the United States and seeks redress for violations of federal laws. There lies supplemental jurisdiction over Plaintiff's

state-law claims because they arise out of the same common nucleus of operative facts as Plaintiff's federal claims asserted herein.

3. This Court may properly maintain personal jurisdiction over Defendant because its contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district, and Defendant is deemed to reside where it is subjected to personal jurisdiction, rendering Defendant a resident of the Eastern District of Pennsylvania.

PARTIES

5. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

6. Plaintiff is an adult individual, with an address as set forth in the caption. At all relevant times herein, Plaintiff was employed with Defendant.

7. Defendant is an ivy-league university located in Philadelphia.

8. At all times relevant herein, Defendant acted by and through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

FACTUAL BACKGROUND

9. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

10. Plaintiff suffers from bipolar disorder (among other health complications).
11. Defendant has and continues to employ over 50 employees per calendar year for at least the last 5 years, and Defendant engages in a variety of business relationships generating revenue in the education business.
12. Plaintiff was hired by Defendant on or about July 5, 2011 as an Animal Care Technician.
13. Soon after Plaintiff was hired, Plaintiff informed Defendant that she needed to take intermittent medical leave due to her disabilities and provided Defendant's management with information about her health.
14. Plaintiff was hospitalized due her disabilities from on or about October 14, 2012 to October 21, 2012.
15. Plaintiff notified Defendant of the nature of her aforementioned hospitalization and soon after returned to work.
16. Plaintiff did not miss work between October 21, 2012 and January 8, 2013.
17. Plaintiff was terminated from Defendant on or about January 8, 2013 for excessive absences, including the time that she was hospitalized.
18. Defendant also claimed that Plaintiff was terminated because she inadvertently placed food in the wrong room of animals on one occasion.
19. ~~Defendant did not terminate other employees who had also placed food in the incorrect room.~~
20. While Defendant claimed that Plaintiff was terminated for her isolated mistake, Plaintiff was really terminated due to her known or perceived health problems, because she

requested some medical accommodations in the form of intermittent time off from work, and/or in retaliation for taking protected medical leave.

21. Plaintiff has had and treated for these aforesaid disabilities for several years. And her disabilities have - at times - limited Plaintiff's ability to enjoy many life functions, including but not limited to thinking, concentrating, and communicating.

COUNT I

Violations of the Americans with Disabilities Act ("ADA", as amended)
([1] Discrimination; [2] Failure to Accommodate; [3] Retaliation)

22. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

23. Plaintiff properly exhausted her administrative remedies before proceeding in this Court for violations of the ADA by timely filing a Charge with the Equal Employment Opportunity Commission ("EEOC") and by filing the instant Complaint within 90 days of receiving a notice of case closure and/or right-to-sue letter.

24. Plaintiff was terminated from Defendant because of: (1) her known health conditions; (2) her perceived health conditions; and/or (3) due to her record of impairment.

25. Plaintiff was also terminated in retaliation for requesting medical accommodations from Defendant.

26. Plaintiff made clear requests for medical accommodations (periodic time off from work) but was refused any interactive process from Defendant (or reasonable consideration of her requests).

27. These actions as aforesaid constitute unlawful discrimination, retaliation, and failure to accommodate under the ADA.

Count II
Violation of the Family and Medical Leave Act ("FMLA")
(Interference & Retaliation)

28. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

29. Plaintiff was an eligible employee under the definitional terms of the Family and Medical Leave Act, 29 U.S.C. § 2611(2)(a)(i)(ii).

30. Plaintiff requested intermittent and/or block leaves from Defendant, his employer, with whom she had been employed for at least twelve (12) months pursuant to the requirements of 29 U.S.C.A. § 2611(2)(A)(i).

31. Plaintiff had at least 1,250 hours of service with Defendant during the prior twelve (12) months.

32. Defendant is engaged in an industry affecting commerce and employs fifty (50) or more employees for each working day during each of the twenty (20) or more calendar work weeks in the current or proceeding calendar year, pursuant to 29 U.S.C.A. § 2611(4)(A)(i).

33. Plaintiff was entitled to receive leave pursuant to 29 U.S.C.A. § 2612 (a)(1) and for a total of twelve (12) work weeks of leave due to her serious health conditions.

34. Defendant terminated Plaintiff for absences that constituted protected FMLA leave.

35. Plaintiff was: (a) improperly dissuaded from using FMLA leave; (b) terminated for seeking, requesting, and/or taking legally protected FMLA leave; and (c) Defendant unlawfully considered Plaintiff's FMLA-qualifying absenteeism in its decision to terminate Plaintiff.

36. These actions as aforesaid constitute unlawful interference and retaliation under the Family and Medical Leave Act.

COUNT III
Violations of the Pennsylvania Human Relations Act ("PHRA")
(Disability Discrimination/Retaliation)

37. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

38. Plaintiff reasserts and realleges each and every assertion as set forth in Count I of this Complaint, as such actions constitute identical violations of the Pennsylvania Human Relations Act.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement, and seniority.

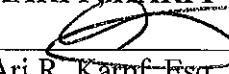
B. Plaintiff is to be awarded punitive or liquidated damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

C. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper, and appropriate (including but not limited to damages for emotional distress / pain and suffering);

D. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

By: 

Ari R. Karpf, Esq.
3331 Street Road
Two Greenwood Square
Suite 128
Bensalem, PA 19020
(215) 639-0801

Dated: November 14, 2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

ACELYN ZANKMAN

CIVIL ACTION

v.

THE UNIVERSITY OF PENNSYLVANIA

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255.
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits.
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2.
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos.
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks.

<u>11/21/13</u>	<u>Ari R. Karpf</u>	<u>Plaintiff</u>
<u>Date</u>	<u>Attorney-at-law</u>	<u>Attorney for</u>
<u>(215) 639-0801</u>	<u>(215) 639-4970</u>	<u>akarpf@karpf-law.com</u>
<u>Telephone</u>	<u>FAX Number</u>	<u>E-Mail Address</u>

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2704 Tolbut Street, Philadelphia, PA 19152

Address of Defendant: 3451 Walnut Street, Philadelphia, PA 19104

Place of Accident, Incident or Transaction: Defendant's place of business

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases

(Please specify) _____

B. Diversity Jurisdiction Cases:

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify) _____
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Ari R. Karpf, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 11/21/13

ARK2484

Attorney-at-Law

Attorney I.D.# 91538

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/21/13

ARK2484

Attorney-at-Law

Attorney I.D.# 91538

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ZANKMAN, ACELYN

(b) County of Residence of First Listed Plaintiff Philadelphia

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Karpf, Karpf & Cerutti, P.C., 3331 Street Road,
Two Greenwood Square, Suite 128, Bensalem,
PA 19020, (215) 639-0801, akarpf@karpf-law.com

DEFENDANTS

THE UNIVERSITY OF PENNSYLVANIA

County of Residence of First Listed Defendant Philadelphia

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 740 Railroad Labor Act	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 411 Voting	<input type="checkbox"/> 750 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 751 Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIFWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): **Americans w/Disabilities Act "ADA" 42 USC 12101, FMLA 29 USC 2601**Brief description of cause: **Violations of the ADA, FMLA and the Pennsylvania Human Relations Act "PHRA".**VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes NoVIII. RELATED CASE(S) (See instructions): **JUDGE** DOCKET NUMBERExplanation: **11/21/13**

SIGNATURE OF ATTORNEY OF RECORD

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